

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

ROBBIE THOMAS, :  
Plaintiff, :  
-----X

-against- :  
REPORT AND  
RECOMMENDATION

UNITED STATES OF AMERICA, :  
Defendant. :  
-----X

**USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 10/15/15  
DATE FILED: 10/15/15**

PITMAN, United States Magistrate Judge:

TO THE HONORABLE J. PAUL OETKEN, United States District  
Judge,

This action is brought under the Federal Tort Claims Act and arises out of an alleged automobile accident. The action was commenced on May 20, 2014. Approximately six months after the action was commenced, plaintiff's counsel sought to withdraw, primarily on the ground that she had been unable to communicate with plaintiff. Counsel's application to withdraw was granted on December 4, 2014. Since that time, plaintiff has done nothing to prosecute the case, and the action appears to be abandoned.

On July 17, 2015, I issued an Order to plaintiff that provided, in pertinent part:

**IF PLAINTIFF WISHES TO PURSUE THIS CASE, HE MUST  
CONTACT THE UNDERSIGNED WITHIN THIRTY (30) DAYS OF THE**

**DATE OF THIS ORDER, CONFIRM THAT HE WISHES TO PURSUE THE CASE AND PROVIDE ACCURATE CONTACT INFORMATION. IF I DO NOT HEAR FROM PLAINTIFF WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER IT IS MY INTENTION TO ISSUE A REPORT AND RECOMMENDATION RECOMMENDING THAT THE ACTION BE DISMISSED WITHOUT PREJUDICE FOR FAILURE TO PROSECUTE.**

(Order dated July 17, 2015 (Docket Item 18) (capitalization and boldface type in original)). Copies of the foregoing Order were sent to four different addresses believed to be associated with plaintiff; only one copy has been returned as undeliverable.<sup>1</sup>

Plaintiff has not responded to My July 17, 2015 Order, nor has he contacted my chambers in any way. In light of the

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<sup>1</sup>The Order was sent to the following addresses:

Mr. Robbie Thomas  
145 Claridge Street  
Elmont, New York 11003

Mr. Robbie Thomas  
145 Claridge Avenue  
Elmont, New York 11003

Mr. Robbie Thomas  
c/o Access Staffing  
25 Melville Park Road  
Melville, New York 11747

Mr. Robbie Thomas  
Inmate No. E-106761  
Bergen County Jail  
160 South River Street  
Hackensack, New Jersey 07601

Only the copy sent to the Bergen County jail was returned as undeliverable.

foregoing, I respectfully recommend that the action be dismissed without prejudice pursuant to Fed.R.Civ.P. 41(b). See Brow v. City of New York, 391 F. App'x 935, 936-37 (2d Cir. 2010) (upholding dismissal for failure to prosecute after a "delay of nearly six months"). There has been no activity by plaintiff to prosecute the matter since its commencement, and plaintiff has not responded to my order seeking confirmation that he remains interested in prosecuting this matter. If this inaction is due to some circumstance that is truly beyond plaintiff's control, a dismissal without prejudice will permit plaintiff to re-file his action and assert his rights.

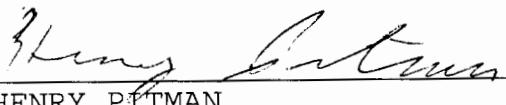
OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed.R.Civ.P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable J. Paul Oetken, United States District Judge, 40 Foley Square, , Room 2101, New York, New York 10007, and to the Chambers of the undersigned, 500 Pearl Street, Room 750, New York, New York 10007. Any requests for an extension of time for filing objec-

tions must be directed to Judge Oetken. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-238 (2d Cir. 1983).

Dated: New York, New York  
October 5, 2015

Respectfully submitted,

  
HENRY PITMAN  
United States Magistrate Judge

Copies mailed to:

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